

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

ASBESTOS WORKERS LOCAL 8 RETIREMENT  
TRUST FUND,

Plaintiff,

v.

R. KELLY, INC.,

Defendants.

Case No. 1:19-cv-113

Bowman, M.J.

**MEMORANDUM OF OPINION AND DECISION**

The instant action is a suit brought by a multiemployer pension plan, against an employer, for unpaid employer contributions to the plan, and for unpaid interest and liquidated damages. This action alleges a violation of the Employee Retirement Income Security Act (ERISA) Title 29 U.S.C. § 1145 which provides:

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

*Id.*

This civil action is now before the Court on Plaintiff's motion for summary judgment. (Doc. 10). Defendant has not filed a response to Plaintiff's motion. Pursuant to 28 U.S.C. § 636(c), the parties have consented to final disposition before the undersigned magistrate judge. (Doc. 7).

Here, Defendant, R. Kelly, Inc. (herein R. Kelly) was a member of the Master Insulators Association of Cincinnati, Ohio and Vicinity (the Employer Association).

The Employer Association and the International Association of Heat & Frost Insulators and Allied Workers, Local 8 (the “Union”) entered into a collective bargaining agreement which covers the wages, hours, terms and conditions of employment of each Employer Association’s employees, including the employees of R. Kelly.

Among the wages, hours, terms and conditions of employment contained in the collective bargaining agreement was a requirement that each employer make employer contributions to the Plaintiff, Asbestos Workers Local 8 Retirement Trust Fund (“Pension Fund”) based upon the hours worked by employees. Plaintiff’s motion for summary judgment asserts that it is undisputed that Defendant has failed to make employer contributions to the Plaintiff pension plan as is required by the collective bargaining agreement. Notably, under the collective bargaining agreement, contributions to the Pension fund are to be paid to the fund on a monthly basis. Records maintained by the Pension Fund indicate that Defendant failed to make employer contributions in 2018 for July, August, September and October and in 2019 for March, April and May. As such, Plaintiff asserts that Defendant owes \$97,208.75 in employer contributions to the Pension Fund. Plaintiff also seeks pre-judgment interest and liquidated damages pursuant to ERISA and post judgment interest pursuant to Title 28 USC § 1961. !!

Summary judgment is appropriate ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. See Fed.R.Civ.P. 56. Having reviewed Plaintiff’s motion,

the undersigned finds the motion (Doc. 10) is well taken and is herein **GRANTED** for the reasons stated therein, because no material facts appear to be in dispute Plaintiff is entitled to judgment as a matter of law on its sole claim under ERISA. (See Doc. 10, Ex. 1 Burke Aff.; See also Exs. 1-4).

Accordingly, the undersigned herein issues the following **ORDER**:

1. The Court enters judgment in favor of the Asbestos Workers Local 8 Retirement Trust Fund and against R. Kelly, Inc. in the amount of \$97,208.75 for employer contributions for the period of July 1, 2018, to May 31, 2019; pursuant to Title 29 U.S.C. §1132(g)(2)(A).

2. The Court enters judgment in favor of the Asbestos Workers Local 8 Retirement Trust Fund and against R. Kelly, Inc. in the amount of \$22,363.44 for prejudgment interest on the unpaid employer contributions pursuant to Title 29 U.S.C. §1132(g)(2)(B).

3. The Court enters judgment in favor of the Asbestos Workers Local 8 Retirement Trust Fund and against R. Kelly, Inc. in the amount of \$22,363.44 for liquidated damages and late fees pursuant to Title 29 U.S.C. §1132(g)(2)(C).

4. The Court enters judgment in favor of the Asbestos Workers Local 8 Retirement Trust Fund and against R. Kelly, Inc. for post-judgment interest pursuant to Title 28 U.S.C. § 1961.

5. For a total judgment in favor of the Asbestos Workers Local 8 Retirement Fund and against R. Kelly, Inc. in the amount of \$141,935.63 for delinquent employer contributions, pre-judgment interest and liquidated damages.

**SO ORDERED.**

s/ Stephanie K. Bowman  
Stephanie K. Bowman  
United States Magistrate Judge